

Agenda Item: 3
Meeting Date: September 8, 2005

DIRECTOR'S REPORT

A. Litigation

1. Federal case

Laub v. Babbitt, et al., U.S. District Court, Fresno

Plaintiffs: The California Farm Bureau Federation (Farm Bureau) and several individual farmers.

Defendants: All Federal and State agencies participating in the CALFED Program. The State agencies named in the Farm Bureau's latest complaint are sued via their executive officers: State, Governor Schwarzenegger; Michael Chrisman, The Resources Agency (Resources); Terry Tamminen, Environmental Protection Agency (CalEPA); Celeste Cantu, State Water Resources Control Board (SWRCB); Lester Snow, Department of Water Resources (DWR); Ryan Broddrick, Department of Fish and Game (DFG); Peter Rabbon, The Reclamation Board (Rec. Brd.); Margit Aramburu, Delta Protection Commission; Darryl Young, Department of Conservation (DOC); Will Travis, Bay Conservation and Development Commission (BCDC); Sandra Shewry, Department of Health Services (DHS); and A.G. Kawamura, Department of Food and Agriculture (CDFA).

Summary of Case: The Farm Bureau filed this case in September 2000. It alleges that the CALFED Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR) violates National Environmental Policy Act (NEPA) and the Administrative Procedures Act. The Farm Bureau seeks an injunction against all State and Federal actions to implement the Record of Decision (ROD) until an adequate EIS/EIR is prepared. The State defendants are apparently being sued under the theory that the Program is a joint, Federal-State partnership that requires NEPA compliance under Federal law; and, therefore, the Federal Government must comply with NEPA for all State projects, as well as Federal projects.

Current Status: The case is pending in the Federal district court. The district court dismissed an earlier version of the complaint as premature in August 2001, but the Court of Appeals reversed that decision in 2003. The district court will hear the merits of the case on cross motions for summary judgment on the issue of whether the Federal defendants violated NEPA. The hearing is scheduled for September 26, 2005.

2. State court cases

Laub v. Davis, et al., Court of Appeal, Third Appellate District (Sacramento)

Appellants/Plaintiffs: The California Farm Bureau Federation and several individual farmers.

Respondents/Defendants: The Resources Agency, Secretary of Resources; CalEPA, CalEPA Secretary.

Summary of Case: The Farm Bureau filed this case in State court after the Federal district court dismissed a California Environmental Quality Act (CEQA) claim that had been part of its original NEPA lawsuit (described above). Defendants won all issues in the trial court and the Farm Bureau appealed. The Farm Bureau alleges that the CALFED Programmatic EIS/EIR violates CEQA and seeks an injunction of all Program activities until the alleged CEQA violations are cured. This case has been coordinated in Sacramento Superior Court with the *Regional Council of Rural Counties* (below).

Current status: Oral argument has been scheduled for August 30, 2005. On the court's own motion, Appellants and Respondents were each given one hour collectively to argue their case. The court also ordered the parties to give particular attention to seven identified issues raised in the briefing.

Regional Council of Rural Counties v. State, et al., Court of Appeal, Third Appellate District (Sacramento)

Petitioners: Regional Council of Rural Counties, Central Delta Water Agency, South Delta Water Agency, and individual farmers.

Defendants: State of California; The Resources Agency, Secretary of Resources; CalEPA, CalEPA Secretary; (plus real parties in interest DWR, DWR Director; and numerous Federal agencies and officers).

Summary of case: The complaint alleges that the CALFED EIR violates CEQA and that the Project would harm the Delta. They also contended that the ROD is illegal under several water law theories. This case was coordinated in Sacramento Superior Court with *Laub v. Davis* (above), and the two cases have been consolidated on appeal.

Current status: Oral argument has been scheduled for August 30, 2005. On the court's own motion, Appellants and Respondents were each given one hour collectively to argue their case. The court also ordered the parties to give particular attention to seven identified issues raised in the briefing.

California Farm Bureau Federation v. Mike Chrisman, et al. Sacramento Superior Court

Petitioners: California Farm Bureau Federation

Defendants: The following state agencies were sued in addition to those Directors and Secretaries in their official capacity. Resources Agency (Michael Chrisman), CalEPA (Terry Tamminen), CDFA (A.G. Kawamura); DWR (Lester Snow); DFG (Ryan Brodrick); DHS (Sandra Shewry); California Bay-Delta Authority (Patrick Wright).

Summary of case: On April 16, 2004, the Farm Bureau filed this CEQA action challenging the adoption of a Final EIS/EIR covering operation of the Environmental Water Account (EWA) through 2007, the end of the first stage of implementation of the CALFED Program. The Farm Bureau alleges the EIS/EIR does not adequately address agricultural resources when analyzing impacts, alternatives, mitigation, and other issues regarding operations of EWA. A large number of State agencies were named in addition to the State agencies actually involved in the EWA, DWR and DFG.

Current status: This matter has been settled and a request for dismissal with prejudice is being filed.